APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appelle,	NOS. 81-1441 81-1442
vs.	DC#CS80-118 LKK
WILLIAM DALE SMITH, and JULIUS CHRIS FISHERMAN, Defendants-Appellants.	OPINION

FILED: Oct. 22, 1982
PHILLIP B. WINBERRY
Clerk, U.S. Court of Appeals
RECEIVED: Oct. 25, 1982

Argues and Submitted: August 13, 1982

Appeal from the United States District Court
For the Eastern District of California
Hon. Lawrence K. Karlton, Presiding

Before: MERRILL, Senior Circuit Judge,
KASHIWA, *Associate Judge, and
WALLACE, Circuit Judge.

MERRILL, Circuit Judge:

Appellants Smith and Fisherman, along with many others, were indicted for conspiracy to violate 21 U.S.C. §846, 21 U.S.C.

*Honorable Shiro Kashiwa, Circuit Judge, United States Court of Appeals for the Federal Circuit, sitting by designation.

§848 and for possession and distribution of a controlled substance (heroin) in violation of 21 U.S.C. §§841(a)(1), 845(a). The indictment named over 20 co-defendants and a large group of unindicted co-conspirators as participants in a massive heroin importation and distribution conspiracy throughout California, Canada, Thailand and China. The jury found Fisher man guilty of conspiracy as chraged, and found Smith guilty on 6 counts of the 15-count indictment, including Count I, the conspiracy count. Upon these consolidated appeals many errors are assigned by both appellants, with two of which this opinion deals.

1. Smith was found guilty of "continuing criminal enterprise" under 21 U.S.C. §848. Subsection (a)(1) of that section makes it a criminal offense to engage in a continuing criminal enterprise. Sub-

section (b) then provides:

> (b) For purposes of subsection (a) of this section, a person is engaged in a continuing criminal enterprise if--
>
> (1) he violates any provision of this subchapter or subchapter II of this chapter the punishment for which is a felony, and
>
> (2) such violation is a part of a continuing series of violations of this sub-chapter or subchapter II of this chapter--
>
> (A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and
>
> (B) from which such person obtains substantial income or resources.

The only dispute presented relates to

the requirement that the series of violations be undertaken "in concert with five or more other persons." It is clear that Smith acted in concert with many more than five persons throughout the course of the conspiracy. The government contends that this is all that is required. Smith, however, contends that the government must show that he directly supervised five people for each of the acts embodying the continuing series of violations. He points out that four of the substantive counts of the indictment involved less than five people.

Courts considering the question have rejected Smith's contention. For example, in United States v. Sperling, 506 F2d 1323, 1344 (2d Cir. 1974), cert. denied, 420 U.S. 962, 421 U.S. 949 (1975), the court stated:

Sperling further argues that the

evidence was insufficent to convict him under §848 because it failed to show that five or more people were working in his narcotics business at the same moment. This argument misconstrues the statute. No such proof is required. As to this element of the offense, the statute requires only that the person charged must have been acting "in concert with five or more other persons" and as to them that he occupied "a position of organizer, a supervisory position, or any other position of mangement".

To the same effect: United States v. Mannino, 635 F2d 110, 116-17 (2d Cir. 1980) United States v. Barnes, 604 F2d 121, 157 (2d Cir. 1979), cert. denied, 446 U.S. 907 (1980); United States v. Michel, 588 F2d 986, 1000 n.14 (5th Cir.), cert. denied,

444 U.S. 825 (1979); United States v. Bolts, 558 F2d 316, 320-21 (5th Cir. 1977), cert. denied, 434 U.S. 930 (1977), 439 U.S. 898 (1978).

We agree with these courts that it is not necessary for the government to show that the organizer worked with five or more persons at the same moment and reject Smith's contention.

2. Smith contends and the government concedes that Smith's conviction for conspiracy under 21 U.S.C. §846 and for continuing criminal enterprise under 21 U.S.C. §848 violates the double jeopardy clause under Jeffers v. United States, 432 U.S. 137, 147 (1977). Judgment must then be reversed as to Count I, the lesser included offense of conspiracy.

We shall not burden this opinion with a discussion of the many other assignments of error. They are discussed in a memo-

randum filed contemporaneously with this opinion. For the reasons there expressed we find no merit in them.

Judgment REVERSED as to Smith's conviction on Count I. In all other respects as to both appellants, judgment is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	NOS. 81-1441 81-1442
v.	DC#CRS80-118 LKK
WILLIAM DALE SMITH, and JULIUS CHRIS FISHERMAN, Defendants-Appellants.	MEMORANDUM

NOT FOR PUBLICATION

FILED: Oct. 22, 1982
PHILLIP B. WINBERRY
Cerlk, U.S.Court of Appeals

RECEIVED: Oct. 25, 1982

Argued and Submitted: August 13, 1982

Appeal From The United States District Court
For The Eastern District Of California
Hon. Lawrence K. Karlton, Presiding

Before: MERRILL, Senior Circuit Judge,
KASHIWA,* Associate Judge and
WALLCE, Circuit Judge.

This memorandum supplements the opinion in this case which is filed concurrently with it. We find no merit in any of the

*Honorable Shiro Kashiwa, Circuit Judge, United States Court of Appeals for the Federal Circuit, sitting by designation.

of the assignments of error here discussed.

1. It was not an abuse of judicial discretion to excuxe juror Waldren. See United States v. Jones, 534 F2d 1344, 1346 (9th Cir.) (per curiam), cert. denied, 429 U.S. 840 (1976). He had twice disregarded court instructions to avoid contact with media coverage and thus had demonstrated an inability to perform his duty pursuant to court order. F.R.Crim.P. 24(c) allows the trial court to replace all jurors who "are found to be unable . . . to perform their duties."

2. It was not an abuse of judicial discretion to excuse juror Brown at the time she was excused because of her pregnant condition. There was no question but that she could enter labor before the trial was completed. To have postponed excusing her until she was no longer physically able to perform her duties could well have

caused serious disruption of the trial.

3. It was not error to excuse juror Nichols after the jury had commenced its deliberation and to replace him by one of the two remaining alternate jurors. Here all counsel stipulated to the substitution. Each defendant was then asked whether he understood the situation and consented. Each stated that he did. Rule 24(c)'s mandate that alternate jurors "shall" be charged after the jury retires can be waived by voluntary and intelligent acquiescence by the parties in a stipulation of counsel. Leser v. United States, 358 F2d 313, 317 (9th Cir) cert. dismissed, 385 U.S. 802 (1966). We agree with the district court that such a waiver occurred here. United States v. Lamb, 529 F2d 1153 (9th Cir. 1975), where there was no stipulation, where there was vigorous defense objection, and where the

original jury actually reached a verdict which the trial judge refused to accept, is distinguishable.

4. It was not an abuse of judicial discretion to permit the screening of incoming spectators by a magnetometer in the manner in which that was done. Here the court had been informed that certain government witnesses were in the Witness Protection Program. Counsel for defendants were invited to express their views on the matter of security measures and use of the magnetometer. Counsel for appellant Smith made certain suggestions with reference to the positioning of the device; the government acquiesced in all these. At the suggestion of counsel for appellant Fisherman, defendants were excused from having to pass through the magnetometer. In striking a balance between the need to preserve the imparti-

ality of the jury and to refrain from weakening the presumption of innocence on the one hand, and the need to protect those inside the courtroom on the other, a careful exercise of judcial discretion is necessary. United States v. Clardy, 540 F2d 439, 442-43 (9th Cir.), cert. denied, 429 U.S. 963 (1976). We find no abuse here. See United States v. Heck, 499 F2d 778, 788 (9th Cir.), cert. denied, 419 U.S. 1088 (1974).

5. Viewing the evidence and inferences which may be drawn therefrom in the light most favorable to the government, United States v. Anderson, 532 F2d 1218, 1223 (9th Cir.), cert. denied, 429 U.S. 839 (1976), there was sufficient evidence to permit a rational trier of fact to find beyond a reasonable doubt that there was a single conspiracy between 1976 and 1980 rather than the four separate conspiracies for

which appellants contend. See United States v. Abushi, 682 F2d 1289, 1293 (9th Cir. 1982). Accepting such finding there is ample evidence to show that both Smith and Fisherman were connected with that conspiracy. Smith participated in transactions with all conspirators. As to Fisherman, while his role was a relatively minor one and his connection was most active in 1979 and 1980, Smith was not his only link and the record shows connections with Patton, Eldridge, Wat and Boon commencing in 1977. While Fisherman contends that he was prejudiced by being tried en masse with twenty other defendants, the acquittal of three members of one of the allegedly separate conspiracies shows that no substantial prejudice occurred as the result of the large joint trial.

6. It was not error to deny Fisherman's motion to suppress evidence found in

searches of his car and his house. The district court's finding that he voluntarily consented to a general search of his car is not clearly erroneous. See United States v. Lopez, 581 F2d 1338, 1343 (9th Cir. 1978). The object of that search was to find counterfeit bills. The address books seized in that search contained the name of a known counterfeiter and were in plain view in a bag containing counterfeit bills. There was sufficient nexus between the items seized and criminal behavior to satisfy Warden v. Hayden, 387 U.S. 294 (1967). The affidavit in support of the warrant for the search of the house provided sufficient support for a finding of probable cause.

7. Viewing the evidence in the light most favorable to the government, a rational jury could have found beyond a rea-

sonable doubt (the standard of review under Jackson v. Virginia, 443 U.S. 307 319 (1979) that the substance brought by Patton from Vancouver was a controlled substance. While direct evidence of its chemical nature is lacking, circumstantial evidence is compelling. We have the facts that the substance was in a powder form, that an exorbitant price was paid for a small amount of the substance, that there had been previous transactions involving heroin or controlled substance between the parties, that the substance was later sold to customers as heroin and none of the customers complained, that the substance was obtained surreptitiously and great effort was taken to conceal its existence, that an experienced user sampled the substnace and attested to its quality, and that the defendants referred to the substance by a name indicating that it was

heroin or a controlled substance. Under the cases this circumstantial evidence is more than enough to support the conviction. See, e.g., United States v. Clark, 613 F2d 391, 405-06 (2d Cir. 1979), cert. denied, 449 U.S. 820 (1980); United States v. Crisp, 563 F2d 1242, 1244 (5th Cir. 1977); Toliver v. United States, 224 F2d 742, 745 (9th Cir. 1955).

8. We do not find it necessary to discuss the remaining assignments of error. They verge on the frivolous.

Upon each of the foreoing assignments, judgement is AFFIRMED.

APPENDIX "B"

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. WILLIAM DALE SMITH, and JULIUS CHRIS FISHERMAN, Defendants-Appellants.	NOS. 81-1441 81-1442 ORDER AMENDING MEMORANDUM AND DENYING REHEARING

FILED: Dec. 14, 1982
PHILLIP B. WINBERRY
Clerk, U.S.Court of Appeals

RECEIVED: Dec. 15, 1982

Before: MERRILL, Senior Circuit Judge, KASHIWA, * and WALLACE, Circuit Judges.

The Memorandum heretofore filed herein on October 22, 1982 is amended by striking the language "containing counterfeit bills" from Lines 1 and 2, Page 4.

This action does not warrant a different result under Warden v. Hayden, 487 U.S. 294

*Honorable Shiro Kashiwa, Circuit Judge, United States Court of Appeals for the Federal Circuit, sitting be designation.

(1962).

Appellant Fisherman's petition for rehearing is DENIED.

APPENDIX "C"

CONSTITUTIONAL PROVISIONS:

U. S. Constitution, Art. 3, Sec. 2,
Clause 3

Trial of Crimes

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

U. S. Constitution, Amend. 6

Mode of Trial in Criminal Proceedings

[Section 1.] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the

nature and cause of the accustion; to be confronted with the witnesses against him; to have complusory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATUTES

Title 21 U.S.C. §841 (a)(1)

Prohibited acts A-Penalties

(a) except as authorized by this Title, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance; or

Title 21 U.S.C. § 846;

Attempt & Conspiracy

Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum

punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 14. Relief from Prejudicial Joinder

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendant which the government intends to introduce in evidence at the trial. (Dec. 26, 1944, eff. Mar. 21, 1946, as amended Feb. 28, 1966 eff. 7-1-66).

Rule 29. Motion for Judgment of Acquittal

(a) Motion before submission to jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of decision on motion. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the

motion, submit the case to the jury add decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion after discharge of jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury. (Dec. 26,

1944, eff. Mar. 21, 1946, as amended Feb. 28, 1966, eff. July 1, 1966).

APPENDIX "D"

Sacramento, California

Monday, May 18, 1981

10:00 a.m. - 4333

---oOo---

THE CLERK: Criminal S-80-118, United States versus William Dale Smith, Cheryl Ann Bickford, James Edward Cameron, Julius Chris Fisherman, Norman Dale Heifner, and Norman Cecil Truax.

THE COURT: Will you bring in the lawyers and the defendants first.

THE CLERK: Criminal S-80-118, United States versus William Dale Smith, Cheryl Ann Bickford, James Edward Cameron, Julius Chris Fisherman, Norman Dale Heifner and Norman Cecil Truax.

MR. GIBBONS: John Gibbons on behalf of the United States. Good morning.

THE COURT: Good morning. Mr. Heman Smith, I have had a communication from Mr. Heller as to his position as to this

problem. I don't know whether it has been communicated to you or not. Mr. Heller's position would be that he would stipulate to the substitution of an alternate. As far as you know, have you heard?

HEMAN SMITH: No. I haven't heard from him but we would not oppose.

THE COURT: The record will further recognize that (page 4334) Mr. Scott Tedmon appears on behalf of Ms. Bickford. I understand Mr. Clifford Tedmon is not available but you are associated?

SCOTT TEDMON: That's correct.

THE COURT: The record will reflect all defendants are present and all other counsel are present.

Gentlemen, our problem is this: I am informed that juror number eleven, Ms. Marilee M. Nichols' mother is dying of cancer. As I understand it, she is going

into the hospital this morning.

Is that correct, Sharon?

THE CLERK: She is having some diagnostic tests this morning and they want to have exploratory cancer surgery as soon as possible.

THE COURT: And Ms. Nichols would like to resolve her obligation as a juror so she can be with her mother at this time of crisis. I ask, first of all, whether any counsel object to the relieving of Ms. Nichols as a juror and the substitution of Erin G. Seals, who is the next to the last alternate, in her place with the instruction to the jury that they recommence all deliberations at this time?

What is the position of the United States?

MR. GIBBONS: No objection, your Honor.

THE COURT: Mr. Smith?

HEMAN SMITH: No objection.

SCOTT TEDMON: Your Honor, in my talk with Clifford Tedmon this morning, he indicated that he would oppose relieving her. We did not know the seriousness of this problem but at this point I would have to communicate with him again before changing our position.

THE COURT: All right. Mr. Dratman, on behalf of your client?

MR. DRATMAN: We have no objection, your Honor.

THE COURT: Mr. Winters?

MR. WINTERS: No objection.

THE COURT: Mr. Hodge?

MR. HODGE: No objection.

THE COURT: Mr. Fong?

MR. FONG: No objection.

THE COURT: Mr. Tedmon, I am going to tell you that I will give you a relatively short time in which to decide the matter. But I will tell you if you decide that you

would prefer to keep Ms. Nichols on this jury under these circumstances, I just may adhere to it, and you will ask yourself how quick a verdict you will get under the circumstances.

SCOTT TEDMON: I understand your Honor. I just felt I had - -

THE COURT: Well, Mr. Tedmon, I will tell you this. I will give you ten minutes to try and reach Mr. Clifford Tedmon and thereafter it is your responsibility. You are associate counsel in this matter. We will stand in recess for ten minutes. All right?

SCOTT TEDMON: All right. Thank you your Honor.

(Recess.)

(Court reconvened without the jury.)

THE CLERK: Criminal S-80-118, United States versus William Dale Smith, Cheryl

Ann Bickford, James Edward Cameron, Julius Chris Fisherman, Norman Dale Heifner, Norman Cecil Truax.

THE COURT: The record will reflect that Mr. Clifford Tedmon has just arrived.

MR. TEDMON: Thank you.

THE COURT: All of your co-counsel has stipulated to the substitution of Mr. Seals for Ms. Nichols.

What is your position?

MR. TEDMON: I did not understand the magnitude and I apologize for any inconvenience, but I am agreeable to that.

THE COURT: Now I will take a waiver from each of the defendants in the matter.

Mr. Smith, do you understand what is going on?

DEFENDANT SMITH: Yes.

THE COURT: Do you personally consent to Ms. Nichols being released and Mr. Seals

taking her place?

DEFENDANT SMITH: Yes.

THE COURT: Miss Bickford?

DEFENDANT BICKFORD: Yes.

THE COURT: Mr. Cameron?

DEFENDANT CAMERON: Yes, sir.

THE COURT: Mr. Fisherman?

DEFENDANT FISHERMAN: Yes.

THE COURT: Mr. Heifner?

DEFENDANT HEIFNER: Yes, sir.

THE COURT: And Mr. Truax?

DEFENDANT TRUAX: Yes, sir.

THE COURT: Thank you very much, If you will remain we will call the jury in and accomplish it.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen. Ms. Nichols, it is our understanding you have a personal tragedy of some consequence?

JUROR NICHOLS: Yes.

THE COURT: And that you have requested that you be relieved so you may be by your mother's bedside. I have discussed this matter with all counsel and all counsel agree that you may be relieved. We want to thank you very much for your services to your country up to date and wish you God's speed and your mother be well. Your are excused, ma'am. And you may leave now if you please.

Mr. Seals, you have heretofore been sworn in this matter. Will you take juror seat number eleven.

Mr. Peschke, we are going to need Ms. Nichols envelope.

UNITED STATES DISTRICT COURT
FOR THE NINTH CIRCUIT

BEFORE THE HONORABLE LAWRENCE K. KARLTON, JUDGE

---000---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Docket No,
	)	
vs.	)	81-1442
	)	
JULIUS CHRIS FISHERMAN,	)	
	)	
Defendant.	)	
	)	

REPORTER'S SUPPLEMENT TRANSCRIPT ON APPEAL

MOTION TO SUPPRESS

WEDNESDAY, DECEMBER 10, 1980

A That's correct. He said, "I want you to look in my car so you can see there's no counterfeit money in there." We went outside to his car and he stood there and I searched the interior of the car -- the glove compartment, under the seat -- and

then I opened the trunk of the car and in a brown-paper sack was a bag of money. At that point I can't remember exactly how much there was, but a lot of twenty-dollar bills, six or seven thousand dollars worth, and there was some address books in the same paper bag. And I looked inside the paper -- or I looked inside the address book and I found the name Danny Migdol and an address.

Q That was the gentleman that you previously testified about was a known counterfeiter, as a matter of fact that you arrested and objected to an investigation that you participated in; is that correct?

A That's correct.

Q Did you seize that book?

A And I seized the book as evidence.

Q Now at any time during the search of the vehicle, was it in the passenger area, the driver's area, or the back seat, whatever,

or the trunk, did Mr. Fisherman ask you to cease and desist that search?

A No.

Q Well, did he make any remark indicating that, "You see. I told you you wouldn't find any counterfeit bills"?

been recovered.

A Did you further notify any probation or parole people?

A Yes. I contacted Mr. Fisherman's probation officer and I had a telephonic conversation with her.

Q Did she indicate to you whether this particular parolee, probationer, was subject to search and seizer under the state statute?

A Yes. She told me that -- that the judge's order in his previous conviction was that he be on probation and that his person and residence be subject to a

search at anytime by law enforcement officer.

Q At no time did Mr. Fisherman, Sir, indicate to you that he wanted you to cease and desist looking at his briefcase, looking in his automobile, or at his residence; is that correct?

A That is correct.

Q Did there come a time, sir, when Mr. Fisherman came to the secret service office in Los Angeles and picked up the address book or books?

A Yes. I told him that I would return the books to him after I examined them, and he came down a few weeks later or -- I don't recall the exact date, and the address book was returned to him and he signed a receipt for it.

Q Did you bring the original with you, sir?

A No. I believe I gave the original to

one of your investigating agents or you in your office.

has been marked as defendant's "A" for identification. Does that look familiar to you?

A Well, it looks like the size of the book that I found in the bag.

Q Were there pages with notations similar to what is depicted in defendant's "A"?

A There were notations in the book.

Q And there were a number of pages within that notebook?

A There were pages in the notebook.

Q Did you go through that notebook?

A Yes.

Q Did you shuffle through it to see if there was any United States currency in there?

A I don't understand the question.

Q Well, was it the size of a notebook that normally U. S. currency would fit in it?

A I don't understand the question.

THE COURT: Are bills bigger than the pages of the book?

THE WITNESS: Yes. They're a little bit bigger than the pages of the book.

Q BY MR. BYRON: When you saw the book there, it did not appear there was any United States currency; is that correct?

A That's correct.

Q Now these other little telephone books you referred to, did it appear that there was any United States currency in those books?

A No.

Q Did you open the books to the various pages?

A Yes.

Q Was that the loose-leaf notebook pad as well; the pad that I just showed you?
A There were two notebooks in there and I looked through both of them.
Q Whatever was contained within that book package you looked into it; is that correct?
A That's right.
Q And was it from your observation of the contents of each of those notebooks that you observed a name Danny Migdol?
A Yes. In the front of the book I observed the name Danny Migdol and there was an address. I believe it was in Big Bear, California.
Q Did you have some conversation with Mr. Fisherman relative to the name Danny Migdol after you saw it in that book?
A We already had a conversation about Mr. Migdol in the bank.
Q Did you then take into your possession the books that you just referred to?

Q Did you return those books that you had taken from his trunk?

A You mean that day?

Q Yes. When he left your office? Did you return --

A No, I kept the books in my office.

Q And did you indicate at some point when you gave them back to him?

A Yeah. I told him I would give the books eventually back to him but I wanted to examine them first.

Q And you don't recall when in point of time it was that you actually gave those books back?

A If I could refresh my recollection by looking at the receipt he signed for the books when he got them back, I could; but I don't recall the date right now without looking at my notes.

MY BYRON: I will stipulate, counsel,

that it was October the 23rd.

MR. GIBBONS: I will do more than that. I will show counsel the original and a xerox copy and have it admitted.

MR. BYRON: All right. Fine.

Q Does October 23, 1979, sound familiar to you?

A Yes. That does sound like the date.

THE COURT: And the search took place when, sir?

THE WITNESS: June 18, 1979, I believe, your Honor.

THE COURT: Thank you.

Car. I don't recall whether - - at what point it was but it was out by the car. That's where I recall him saying that. He didn't say it inside the bank. He said it out by the car.

Q You don't know whether it was prior to the search of the vehicle or after?

A I don't recall.

Q At some point following the seizure of the books that we have been talking about, deputy Petievich, I assume that you had those photographed; is that right?

A The contents of the books, yes, sir.

Q And that was each page of each book; is that right?

A Yes

Q And you retained those in the property or in your custody after you returned the books themselves to Mr. Fisherman?

A Yes, sir.

Q At some point did you deliver copies of what documents you had in your possession to any other law-enfocement officer?

A Yes, I did.

Q To whom did you deliver those books?

A I delivered the -- those to the -- I

mailed them up here to Sacramento to the department of -- the state department of drug enforcement.

Q When was that done, sir?

THE COURT: Was that the bureau of narcotics enforcement?

THE WITNESS: Yes, sir. Yes, your Honor.

THE COURT: All right.

THE WITNESS: I'd have to look at the date on my letter of transmittal in recalling that one.

Q BY MR. BYRON: Do you recall the approximate time, month and year?

A Actually I don't.

THE COURT: I think that Mr. Gibbons is about to aid you again, sir.

Q BY MR. BYRON: Does February 8, 1980, sound familiar to you Deputy Petievich?

A Yes, it does.

Q That appears to be the date of the

letter of transmittal sent to the organized crime strike force?

A Yes. I recall that as the date.

Q And did you enclose the copies of the documents that you had photographed from the books taken from Mr. Fisherman?

A Yes, sir.

Q By the way, prior to your forwarding those documents to the strike force, did you have some contact with somebody from the Sacramento police department or the United States Government?

A No. I forwarded it, I believe, to the State Bureau of Narcotics Enforcement.

Page 31

Q Was that just a matter of course or were you requested to do so?

A No. I received a phone call from Sergeant Clifton, I believe, who asked me to send them up.

Q And do you recall when that phone call was made?

A Probably the same date -- probably February the 8th the date of the letter, or the day before or so.

Q Had you had any contact with any other law-enforcement officer between June 18, 1979 and February 18th of 1980, relative to these documents that you had in your possession?

A Idid forward -- I did send either a copy of my report or copies of the address book to the L. A. Police Department to agent Joe Amorey, who worked administrative narcotics.

Q Do you recall when that was done?

A Again I would just have to look at my file on that. It was -- this would be before -- probably a few weeks before the call from Sergeant Clifton.

Q Was there any special contact or reason

that prompted your sending these documents to agent Amorey?

A Yes, because I believed that Mr. Fisherman was a dope pusher.

Q And that was the purpose for your sending those documents over, is that right?

A That's correct.